



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/17045/2013
& VA/17043/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 31 July 2015
Prepared on 31 July 2015**

**Decision & Reasons Promulgated
On 5 August 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MRS FARIBA NEISARY - 1ST APPELLANT
MISS MARZIYEH TALEI - 2ND APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr Mahmoud Talei, the Sponsor

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Iran. They are mother and daughter. They appeal with permission against the decision of the First-tier Tribunal (Judge Hindson) which in a determination promulgated on 3rd June 2014, dismissed their appeals against the Respondent's decision of 25th July 2013 refusing to grant them entry clearance to the UK as visitors.

2. They applied to visit Mr Gholam Hossein Talei, who is the husband of the first Appellant and the father of the second. They also wanted to visit Mr Mahmoud Talei who is the son of the first Appellant and the brother of the second. At the time of the applications Mahmoud Talei was living in the same area as his father. He has now removed to Glasgow.
3. When their appeals came before Judge Hindson it was expected that Mr Gholam Hossein Talei would attend the hearing to give evidence on their behalf. He did not attend but Mr Bari from Chapeltown Law Centre did. Mr Bari had clearly expected Mr Gholam Hossein Talei to attend the hearing because the Judge records this at [2] of his decision. It would appear then, that being without instructions, Mr Bari withdrew his representation.
4. In the absence of any explanation for the non-attendance of the sponsor, Judge Hindson proceeded with the hearing forthwith. He was entitled to do and no criticism attaches to him for that decision.
5. The Judge went on to hear submissions from the respondent and dismissed both Appellants' appeals.
6. Permission to appeal was sought and initially refused by the FtT, but a renewed application before the Upper Tribunal, was granted. The relevant parts of the grant are set out below:

"The materials before the FTTJ were not of the strongest but a number of concerns arise from the determination. Firstly, as suggested in the grounds, it is arguable that the FTTJ erred in failing to take into account the various financial documents provided as to the income and financial status of the financial sponsor (the brother/ son of the appellants) including a profit and loss account from his accountants. The FTTJ at [5] and [6] does not seem to take those documents or any others into account, merely agreeing in general terms with the refusal letter which does not mention them. Secondly, there is evidence on the correspondence spike of the file of the father/husband of the appellants having significant mental health problems. It is additionally arguable that the FTTJ was not entitled at [6] to draw a strong adverse inference from his non-appearance."

Thus the matter comes before me to decide if the FtT decision contains an error of law requiring it to be set aside.

Mr Diwnycz appeared for the Respondent and Mr Mahmoud Talei, the Appellants' son/brother attended on their behalf.

Error of Law

7. I am grateful to Mr Diwnycz for his customary helpful submissions. Although a Rule 24 response had been served defending the Judge's determination, he accepted that there was an issue of the Judge not being aware of the financial status and income of Mr Mahmoud Talei who appears to have become the main sponsor Mr Gholam Hossein Talei is disabled and too ill to attend any hearing.

8. Mr Diwnycz surmised that the financial documents which are now attached to the file, may well not have been brought to the Judge's attention at the original hearing.
9. Following those submissions I announced that I was satisfied that the decision of the FtT must be set aside for legal error on the basis of a failure to take into account relevant evidence.
10. Mr Diwnycz submitted that the appropriate course now should be for the matter to be remitted to the FtT. This would then give the respondent the opportunity to review all the financial evidence produced by Mr Mahmoud Talei. It would also give him the opportunity of producing any further evidence, which he considers may be required and to attend a hearing to give oral evidence.
11. Mr Mahmoud Talei now lives in Glasgow. It is appropriate therefore that this matter be remitted for a fresh hearing to the FtT sitting in Glasgow. The consent of that Tribunal has been obtained for an early hearing of this matter which will now take place on 28th August 2015. Mr Mahmoud Talei is aware of the new hearing date.

Decision

12. The decision of the FtT dismissing the Appellants' appeals is set aside for legal error. The matter is remitted to the First-tier Tribunal for hearing in Glasgow on 28th August 2015. The hearing will be a full re-hearing with all issues at large.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated